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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SIERRA CLUB and SOUTHERN BORDER  
COMMUNITIES COALITION,

*Plaintiffs,*

v.

DONALD J. TRUMP, President of the United  
States, in his official capacity, *et al.*,

*Defendants.*

Case No. 4:19-cv-00892-HSG

M.S.J. Hearing Date: Nov. 20, 2019  
Time: 10:00 AM

**MOTION OF THE U.S. HOUSE OF  
REPRESENTATIVES FOR LEAVE  
TO PRESENT ARGUMENT IN  
THE PARTIAL SUMMARY  
JUDGMENT HEARING**

The United States House of Representatives respectfully requests leave to present argument during the hearing on the parties' motions for partial summary judgment, which is currently scheduled for November 20, 2019 at 10:00 a.m. ECF No. 205. This Court granted the House's motion for leave to file a brief as amicus curiae expressing the views of the House in support of plaintiffs' motion for partial summary judgment. ECF No. 224. As discussed below and in our amicus brief, ECF No. 230, the House has a compelling institutional interest in the Court's grant of relief to prohibit the Executive Branch defendants from spending federal funds under 10 U.S.C. § 2808 without a valid Congressional appropriation. Because the expenditures challenged here usurp the House's Article I legislative authority, the House has a distinct interest

1 in this case and respectfully submits that its presentation of argument will aid the Court in its  
 2 determination of the issues. Plaintiffs consent to the House's motion. Defendants take no  
 3 position on this motion.

4       This suit arises out of the Executive Branch defendants' expenditure of federal funds to  
 5 construct a wall along the southern border of the United States in violation of the Appropriations  
 6 Clause of the U.S. Constitution and constitutional separation-of-powers principles. The  
 7 Appropriations Clause provides that “[n]o Money shall be drawn from the Treasury, but in  
 8 Consequence of Appropriations made by Law.” U.S. Const., Art. I, § 9, cl. 7. This Clause vests  
 9 Congress with “exclusive power over the federal purse,” and it is “one of the most important  
 10 authorities allocated to Congress in the Constitution’s ‘necessary partition of power among the  
 11 several departments.’” *U.S. Dep’t of the Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012)  
 12 (quoting *The Federalist No. 51* (James Madison) (Clinton Rossiter ed., 1961)).

13       As explained in our amicus brief, although Congress appropriated only \$1.375 billion for  
 14 the construction of barriers along the southern border, the President announced that his  
 15 Administration would spend up to \$8.1 billion. *See* ECF No. 230 at 3. The Administration  
 16 claims that it has statutory authority to expend those funds, including pursuant to 10 U.S.C.  
 17 § 2808. *Id.* at 3-4. Those arguments are incorrect, as plaintiffs and the House have argued: the  
 18 cited statutory provision provides no authority for the expenditures on a border wall. Absent a  
 19 valid Congressional appropriation, the defendants are violating the Appropriations Clause.

20       To protect its constitutional interests, the House has filed its own suit in the U.S. District  
 21 Court for the District of Columbia challenging the Administration’s expenditure of federal funds  
 22 under, *inter alia*, Section 2808 to construct a border wall. *See U.S. House of Representatives v.*  
 23 *Mnuchin*, No. 19-cv-969 (D.D.C. April 5, 2019), *appeal docketed*, No. 19-5176 (D.C. Cir. June  
 24 14, 2019). To protect its constitutional interests, the House recently filed an amicus brief in this  
 25 suit urging the Court to grant the plaintiffs’ motion for partial summary judgment concerning  
 26 expenditures pursuant to Section 2808. This Court has previously granted the House leave to file  
 27 an amicus brief in support of the plaintiffs’ motion for a preliminary injunction, *see* ECF No. 46,  
 28 and to participate in the hearing on that motion, *see* ECF No. 89. With the Court’s leave, the

1 House has also filed an amicus brief in support of the plaintiffs' motion for summary judgment  
 2 concerning expenditures pursuant to 10 U.S.C. § 284. *See* ECF No. 174.

3 As noted at the outset, because the actions by the Executive Branch defendants here go to  
 4 the very heart of an essential power of Congress, put in place by the Framers to protect the people  
 5 of the United States from unchecked actions by the Executive Branch, the House has a unique  
 6 interest in this matter. Accordingly, the House respectfully requests leave to present argument  
 7 during the hearing on the motions for partial summary judgment.

8 **CONCLUSION**

9 For the foregoing reasons, the Court should grant the House's motion for leave to present  
 10 argument in the partial summary judgment hearing scheduled for November 20, 2019.

11  
 12 Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2019, I caused the foregoing document to be filed via the U.S. District Court for the Northern District of California's CM/ECF system, which I understand caused service on all registered parties.

/s/ *Megan Barbero*  
Megan Barbero